

Kewal Singh Vs. Ram Chander and Another

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Court : Allahabad

Decided On : Mar-15-1989

Reported in : AIR1990All99

Judge : D.S. Sinha, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 2, 3, 3(1), 75 and 75(2)

Appeal No. : F.A.F.O. No. 931 of 1988

Appellant : Kewal Singh

Respondent : Ram Chander and Another

Advocate for Def. : P. Chandra Shekhar Sharma and ;Nafis Ahmad Kazmi, Adv.

Advocate for Pet/Ap. : A.D. Prabhakar, Adv.

Judgement :

1. Shri Nafis Ahmad Kazmi, the learned counsel for the respondents, objects to the maintainability of this appeal, under Section 75(2) of the [Provincial Insolvency Act, 1920](#), (hereinafter referred to as the Act), on the ground that an appeal under the said provision lies to this Court only against decision or order of a District Court made otherwise than in appeal and the impugned order, which is not an order made otherwise than in appeal, has been passed by the Civil Judge, Saharanpur, and the Court of a Civil Judge is not a District Court as contemplated by the Act.

2. Sub-section (2) of Section 75 of the Act reads thus:--

'(2) Any such person aggrieved by any such decision or order of a District Court as is specified in Schedule I, come to or made otherwise than in appeal from an order made by a subordinate Court, may 'appeal to the High Court.'

3. A bare perusal of the above provision leaves no room for doubt that an appeal, under Section 75(2) of the Act, lies to High Court only against a decision or order of a 'District Court' as specified in Schedule I; or made otherwise than in appeal. Expression 'District Court' is defined in clause (b) of subsection (i) of Section 2 of the Act as the Principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns. Indisputably, it is the Court of District Judge which is principal Civil Court of original jurisdiction and not any other Court. Other classes of Civil Courts, including the Court of Civil Judge, are Courts Subordinate to District Court. The Court of Civil Judge, Saharanpur is, obviously, a Court subordinate to District Court and not itself a District Court. No appeal under Section 75(2) of the Act would, therefore, lie to this Court against any decision or order of Civil Judge, Saharanpur.

4. Shri A. D. Prabhakar, the learned counsel for the appellant, contends that the Civil Judge, Saharanpur, while passing the order under challenge in this appeal, was exercising jurisdiction concurrent with the District Court, Saharanpur, and, as such, the appeal under Section 75(2) of the Act would be maintainable before this Court.

5. Section 3 of the Act contemplates 'District Court' to be the Court having jurisdiction under the Act. However, proviso to Section 3 empowers the State Government to invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested has concurrent jurisdiction with District Court. In other words, it is the Court of District Judge which is primary Court of insolvency though proviso to section 3 stipulates making of a Court of Subordinate Judge to be insolvency Court, Subordinate Court, when invested with jurisdiction under the Act, will have same powers as the District Court but will, surely, not become principal Civil Court of original jurisdiction i.e. District Court. No doubt, Civil Judge, Saharanpur, while passing the order in question, exercised

concurrent jurisdiction with District Court, Saharanpur and had same powers as the District Court, he was still a Court subordinate to District Court. That being so, the order passed by Civil Judge, Saharanpur, would not be appealable to this Court. Contention of Sri Prabhakar, cannot, therefore, be upheld.

6. Consequently, objection on behalf of the respondents with regard to maintainability of instant appeal succeeds. The appeal is held to be not maintainable before this Court and is dismissed as such. There will be no order as to costs.

7. Appeal dismissed.

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